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JAN 28 2005

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January 25, 2005

Office of the Secretary
Federal Communications Commission
445 -12th Street, S.W., Rm TW-204B
Washington, D.C. 20554

JOCKET FILE COPY ORIGINAL

RE: Appeal to the Federal Communications Commission
Wapakoneta City School District, Billed Entity No. 130174

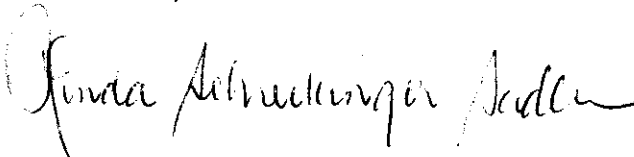
To Whom It May Concern:

Enclosed please find an appeal from a decision by the Schools and Libraries Division of the USAC relative to the school district noted above.

Enclosed are an original and five copies of the Appeal and Request for Expedited Relief. Please file the original and four of the copies and return one time-stamped copy to me in the enclosed self addressed-stamped envelope.

Please direct all communication regarding this appeal to my attention at the address noted above. Thank you for your assistance in this matter.

Yours truly,



Linda Schreckinger Sadler

Encl.

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Before the
Federal Communications Commission
Washington, D.C. 20554

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JAN 28 2005

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In the Matter of)	File No. SLD -
)	
Appeal of Decision of the)	
)	
Universal Service Administrator)	
)	
By)	CC Docket No. 96 - 45
)	
Wapakoneta City School District)	
Wapakoneta, Ohio)	CC Docket No. 97 - 21
)	
Federal-State Joint Board on)	
Universal Service)	
Changes to the Board of Directors of)	
The National Exchange Carrier)	
Association, Inc.)	

Appeal and Request for Expedited Relief
on behalf of the
Wapakoneta City School District

TO: Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

Appeal From the Following Funding Commitment Decision Letter

Form 471 Application Number:	407479
Funding Year 2004:	07/01/2003-06/30/2004
Billed Entity Number:	130174
FRN:	1116465
Date of Funding Denial Notice:	December 3, 2004

SLD's Reason for Funding Denial

The SLD denied funding on all this Application for the reason that "30% or more of this FRN includes a request for Edline webhosting service which is an ineligible product(s)/service(s) based on program rules."

Statement in Support of Appeal

Wapakoneta City School District of Wapakoneta, Ohio ("Wapakoneta") seeks review of a decision by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). The decision by the SLD denied Wapakoneta funding for web hosting for the July 1, 2003-June 30, 2004 Funding Year for the reason that "30% or more of this FRN includes a request for Edline webhosting service which is an ineligible product(s)/service(s) based on program rules."

1. The SLD applied the "30% rule" incorrectly when it denied Applicant's request for webhosting services

Wapakoneta City School District properly prepared, and timely filed, a FCC Form 471 for web hosting services with Edline as the vendor. The SLD denied funding on the grounds that: "30% or more of this FRN includes a request for Edline webhosting service which is an ineligible product(s)/service(s) based on program rules." Wapakoneta appeals this decision on the basis that it's request for web hosting services was fully eligible and that the SLD wrongfully denied its request basing its decision on incorrect assumptions.

a. Web hosting is an eligible service

Web hosting is an eligible service under the Internet Access section of the Eligible Services List for Funding Year 2004. It is for this service that Wapakoneta applied. Edline, the

web hosting provider selected by Wapakoneta, submitted a bid and contract for its services. It appears that the SLD wrongly interpreted language contained in the bid/contract and relied on its misinterpretation in denying funding for this item. During the Program Integrity Assessment (PIA) the only documentation that was requested was a detailed bill for services. In response to the request, a copy of the bid and contract were both provided. The SLD made no further inquiry, requested no further documentation or clarification and denied funding for Wapakoneta's web hosting request. The SLD failed to consider all relevant factors necessary to make such determination and its decision should be reversed.

Wapakoneta alleges that the services provided by Edline are fully eligible. Items contained in the contract that appear to be ineligible, are, in fact eligible under the parameters established by the Special Eligibility, Ancillary Use section of the Eligible Services List. This section provides:

If a product or service includes ineligible functionality, then in general, the proportionate cost of this functionality must be removed from funding requests through a cost allocation process. However, in certain limited cases, if any ineligible functionality is strictly ancillary to the principle uses of the product or service, the full product or service may be eligible for discounts.

The following conditions are considered when evaluating whether ineligible functionality is ancillary:

- The package must represent the most cost-effective bid for the eligible product or service.
- The consideration of cost-effectiveness must be made without considering ineligible features.
- The package is a standard product offering that includes the ineligible features as an integral, intrinsic part, with no separated pricing available.
- The applicant cannot be specifically seeking any of the ineligible components.

The web hosting services requested by Wapakoneta clearly fall within the Internet Access Special Eligibility exceptions. It was error on the part of the SLD when it failed to apply the

Special Eligibility section of Internet Access to the Wapakoneta's contract with Edline. Looking to the conditions necessary to establish ancillary use, a review of Wapakoneta's application and documentation demonstrates that all these conditions have been met. (1) Wapakoneta chose Edline using vendor selection criteria and selected Edline as the most cost effective bid for web hosting service; (2) Wapakoneta's selection of Edline looked to the cost effectiveness of the web hosting services they could provide and gave no consideration to the other (ineligible) components of the bid; (3) the services deemed by the SLD to be ineligible are an intrinsic part of Edline's standard web hosting package with no separate pricing available (see bid response and contract attached hereto as Exhibit A); and (4) Wapakoneta did not specifically seek any of the ineligible components contained in the bid; they sought web hosting and the additional features provided by Edline were clearly ancillary to the web hosting service sought by Wapakoneta. Since Wapakoneta's application and vendor selection processes clearly comply with all four conditions necessary to establish 'ancillary use' it was wrong of the SLD to deny funding for web hosting service. The SLD should have considered Wapakoneta's web hosting request under the Special Eligibility Section of Internet Access and granted funding. Compounding its error, the SLD made an unsubstantiated finding that these "ineligible" services comprised more than 30% of the eligible services request – something completely unsupported by the documentation in its file. It is obvious that the SLD made erroneous assumptions with respect to this FRN and denied funding based on those assumptions. For this reason their decision should be overturned and Wapakoneta County School District should receive funding for web hosting services.

b. Supplemental documentation

USAC appeal guidelines permit new information to be provided on appeal for the purpose of clarifying an ambiguity contained in earlier information. See *Request For Review by*

*Shawano-Gresham School District.*¹ On its face, the Edline bid and/or contained ambiguities that the SLD failed to clarify through the PIA process. It was the SLD's incorrect assumptions and failure to resolve bid/contractual ambiguities that resulted in the denial of funding for Wapakoneta. The SLD's own guidelines permit the submission of documentation on appeal when the applicant points out an incorrect assumption by the SLD, the documentation is consistent with information initially provided and is being offered on appeal to resolve an ambiguity. See *Shawano-Gresham*, supra. In accordance with these procedures, attached hereto Wapakoneta submits a communication from Edline clarifying the items contained in the bid and/or contract that caused the SLD to deny funding (See Exhibit "B").

This new information is not being submitted to contradict earlier information but is being offered to clarify ambiguities contained in earlier information. The original Edline bid and/or contract contains language regarding items and services that were likely deemed ineligible by the SLD, to wit: "This cost includes: Hardware and Software necessary for the Edline solution." Exhibit "B" clarifies the bid/contract provisions by showing that, although referenced in the contract, no hardware or content are provided. This supplemental documentation demonstrates that the requested services are for web hosting, and web hosting only, and therefore comply with eligible services standards. It serves to clarify ambiguities contained in earlier information upon which the SLD denied funding. For these reasons, it should be considered for the purposes of this appeal.

¹ See *Request For Review by Shawano-Gresham School District*, File No. SLD-292913, CC Docket No. 02-6, Order DA 04-308 (Adopted February 5, 2004).

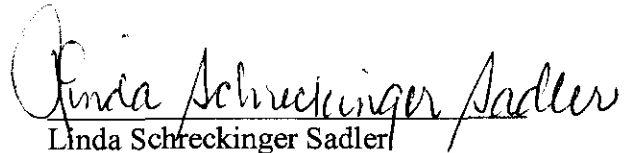
Conclusion

It is clear that the SLD made erroneous assumptions based upon the language contained in the Edline bid and/or contract and used these assumptions as grounds for denying funding to Wapakoneta for eligible web hosting services. The supplemental documentation provided herein points out these incorrect assumptions which concern an issue consistent with the information originally provided. This document provides the SLD with the opportunity to correct its erroneous assumptions. For this reason, the documentation should be considered. See *Shawano-Gresham*, supra, at Paragraph 6.

Applicant hereby requests:

1. That this matter be acted upon within 90 days or less of the filing date of this appeal;
2. That the FCC order funding for the FRN set forth herein.
3. That funds be set aside to totally fund the District's request.

Respectfully submitted,



Linda Schreckinger Sadler
Attorney at Law
Ohio Bar No. 0000827
25801 Richmond Road
Cleveland, OH 44146
Phone: 216-831-2626
Fax: 216-831-2811
Email: lschrecks@yahoo.com

Exhibit A



Response to WAPAKONETA CITY SCH DISTRICT

Form 470's # 116770000488717

**Submitted by
Edline (SPIN #143027282)
162 N. Franklin Street
Chicago, IL 60606**

January 16, 2004

Introduction

Edline (SPIN #143027282) is pleased to respond to your Form 470 116770000488717. We are responding only as a district wide provider of web hosting services.

Edline provides the leading website and portal solution for K12 education. Used by schools in all 50 states and numerous countries, Edline has been recognized in Newsweek magazine, Fox & NBC television, educational technology publications such as T.H.E. Journal, and countless newspapers across the country (see attached samples).

Edline is a comprehensive, end-to-end, web hosting solution that can be used to supplement your current school websites, or be used to completely serve all of your school or district's web hosting needs. With Edline:

- Every district and every school in the district receives its own website.
- All school and district subgroups receive a complete website solution (no page or traffic limit):
 - Every class has its own website/homepage (with homework, grades, calendars, and more) within the district or school site.
 - Every team and club has its own website within the district or school site.
 - Every staff group or parent group (PTA, school committees, etc.) has its own website within the district or school site.
- Every student, parent, teacher, and administrator receives a unique user account for personalized security, permissions, and access (essential for making grades and other private information available at your school's website).
- The public can view general school information at any time without a password, but private information is visible only to visitors that login with a screen name and password.
- Email alerts notify parents, students, and teachers of critical new information at your school's website (attendance, new grades, policies, etc.) Works with any email provider.

Because Edline is *easy to use* (visitors to your school's website are immediately presented with personalized links to the classroom, team, or other group homepages that apply specifically to them), *comprehensive* (everything from lunch menus to teacher-only resources to classroom-level progress reports for parents), and *secure* (you can post private grades and reports for personalized access with 128-bit encryption), Edline has tremendous impact on school performance and will enable you to:

1. Increase Parental Involvement.
2. Improve Internal Communication.
3. Reduce paper-based costs (photocopying, envelopes, etc.).
4. Improve Student Achievement.

Web Hosting in a K12 Setting: Edline Essentials

Edline is truly unique in the K12 marketplace. Below are just a few examples of the remarkable power and usability of Edline's K12 web hosting solutions. To more fully appreciate the time-savings and cost-efficiency of Edline, we encourage you to view a live web demonstration of Edline.

1. **Easy for IT Personnel to Implement.** With Edline, there's no hardware to buy, software to install, or servers to manage. Edline is a turn-key service, and we manage all of the infrastructure for you, twenty-four hours a day, seven days a week – web servers, routers, bandwidth, firewalls, load balancing, site monitoring, backup, fail-over systems, hardware repairs, and more – everything you need to host an enterprise website for thousands of users in a K12 setting. This greatly reduces time, effort, and cost.
2. **Easy for Teachers.** Edline web hosting is designed for the average teacher – there is no need to use *HTML*, *FTP*, or be a computer expert.
 - a. Teachers and staff can easily post pre-existing content (so there is no need to retype or recreate previous work) to their Edline web pages using just a browser – no *FTP* or *HTML* required. Teachers can post homework, lessons, or other resources previously created in Acrobat, Word, PowerPoint, or other formats. Teachers can also cut and paste or simply type directly onto their Edline pages. Using most common gradebook software applications, teachers can post hundreds of student progress reports to their Edline classroom website in a matter of seconds using Edline's one-click publishing protocol.
 - b. Edline's special mass "rollover" feature allows teachers to rollover web-calendars by the day, week, month, or year to make semester and yearly transitions easy at classroom websites. They can also quickly re-publish content if there is an unexpected change, such as a "snow" day.
 - c. Edline special "multi-class" web posting allows teachers to post homework, calendar items, or other content to several class web pages simultaneously (e.g. a teacher has three sections of biology with separate groups of students and separate home pages, but 50% of the content at the various biology home pages is identical).
 - d. Edline automatically archives teacher web pages at the end of each semester so that homework, lessons, calendars, and other content can be easily re-used on future classroom websites.
3. **Easy to use with your Student Information System.** Using your student information system with Edline rapidly configures (in a matter of minutes) your school website to have designated homepages for every classroom. Updates from your student information system are instantly incorporated in your class websites, so that class web pages accurately reflect currently offered classes. Class rosters are also updated. Parents and students' shortcut links reflect their current classes, so they are immediately able to locate their own class web pages.
4. **Proprietary "One Click" Publishing.** Edline's unique "one click" publishing protocol allows teachers and administrators to transfer/publish files to your school's website seamlessly from a variety of sources, including most third party student information systems and gradebook applications. For example, Edline One Click Publishing enables teachers to securely post hundreds of personalized and grade, attendance, or other progress reports from most leading gradebook software applications in seconds.

Conclusion

Edline provides K12 website and portal solutions that truly impact school performance and student achievement. It is secure, scalable, and enables you to publish both generalized school information (homework, announcements, etc.) and private, mission-critical information (e.g., student-specific grades, attendance) at your district, school, classroom and other key-group web pages. We sincerely hope you will view a live web demonstration to learn why Edline is the industry leader.

Your district's E-Rate Funding Year 7 (7/04 – 6/05) cost for Enhanced Edline Service is \$7,862.40. This cost includes:

- All Hardware and Software necessary for the Edline solution
- Standard set-up, Maintenance and Service Updates
- Technical Support (800 toll free Phone and Email)
- Basic Web Based Training

Thank you for the opportunity to present our web hosting service in response to your Form 470. Do not hesitate to contact us for more detailed information by calling 800.491.0010 or visiting www.edline.com.

Sincerely,



Jay Alter
Vice President

EDLINE

Edline, 162 N Franklin, Chicago, IL 60606 Phone: 312-346-9900 Fax: 312-236-7251

Quotation/Purchase Order Request**June 23, 2003****Valid only if PO received within 30 days****Customer: Wapakoneta City Schools****Billing Address**Wapakoneta City Schools
Accounts Payable
3 North Pine Street
Wapakoneta, OH 45895-1699**Technical Contact**Name: Mike Watt
Email: wattmi@wapak.org
Phone: [1] 419-739-5200
Fax: [1] 419-739-5305**Description of Service****Dates of Service****Cost of Service**

Edline Service for Sr. HS (\$158/month)	Period Beginning: 8/1/03	Sr. HS Price: \$1,896.00
Edline Service for Jr. HS (\$128/month)	Period Ending: 7/31/04	Jr. HS Price: <u>\$1,536.00</u>
		Total: \$3,432.00

Name(s) of School(s) Receiving Service**# Students**

Wapakoneta Senior High School

751—1,000

Wapakoneta Middle School

501—750

Edline Service includes:

1. Hardware and software costs - there are no servers to manage, hardware to configure or software to install
2. Edline technical support and standard set-up
3. Documentation for all users - administrators, teachers, and families
4. Maintenance during the term of your service
5. "One-click" integration with GradeQuick

District/School Systems**Student Software** POISE (NOACSC A-Site)**Gradebook** Jackson (GradeQuick)

This price is based upon the school information provided above and receipt of a purchase order within 30 days.

**IMPORTANT: Please confirm your technical contact information when you order.
Incomplete or incorrect contact information will delay your service.****Please fax your Purchase Order to 312-236-7251**

Web Hosting Contract

Customer: Wapakoneta City School District (Wapakoneta)
Address: 1102 Gardenia Drive
Wapakoneta, Oh 45895-1637
Contact: Don Arnett

Service Provider: Edline LLC
Address: 162 North Franklin Street
Chicago IL 60606
Contact: Jay Alter

Service: Web Hosting

Effective Date: July 1, 2004
Term: July 1, 2004 through June 30, 2005

Contract Amount:
Annual one time charge: \$ 3,432.00

In consideration for provision of service by Edline LLC, Wapakoneta agrees to pay Edline 48% of recurring price of the Web Hosting service identified in this Contract in accordance with standard school district practices. Wapakoneta anticipates that the Schools and Libraries Division (SLD) will cover the remaining 52% of the recurring charges due to Edline.


It is anticipated that the payment(s) above by the SLD will be made directly to Edline; provided, however, that Edline shall reimburse Wapakoneta for any overpayments. Such reimbursement shall be made no later than forty-five (45) calendar days after Wapakoneta notifies Edline of such overpayment. If Wapakoneta is not reimbursed within forty-five (45) calendar days due to the fault of Wapakoneta (and not the fault of Wapakoneta or the SLD), then Wapakoneta may, at its discretion and upon notification to Wapakoneta, recover any overpayment(s) through offsets to future payments. Nothing herein is intended to abridge or expand such other rights as the Wapakoneta may have to recover such overpayments.

In the event that Wapakoneta does not receive or is otherwise ineligible for all or any portion of its anticipated SLD funding, Wapakoneta shall nevertheless remain liable for timely payment to Wapakoneta during the remainder of the then-current term, using other sources funding.

This proposal is contingent upon a written request from the Wapakoneta to proceed, which request shall be provided by Wapakoneta to Edline no later than ninety (90) days from the date of this proposal. If Edline does not receive such a written request during the aforementioned ninety-(90-) day period, this proposal shall be void and of no further force or effective.

Please note that Wapakoneta's Contract, substantially in the form attached hereto, will represent the sole terms and conditions upon which above services will be offered to Wapakoneta.

Agreed:


Wapakoneta City School District

Edline LLC

Exhibit B



PO Box 06290
Chicago, IL 60606
T. 312.346.9900
F. 312.236.7251

January 24, 2005

This letter provides further clarification why Edline's Web hosting service is 100% eligible.

Edline Web Hosting Services – Funding Year 2004 Eligibility

I. Web Hosting Services

1. Edline provides Web Hosting services to school districts. This service provides a means for Edline's school district customers to display content on the Internet.
2. Edline's customers pay for the right to establish their own Web sites and publish content to their Web sites on Edline servers that Edline owns, operates and maintains at Edline's data center.
3. Edline customers receive NO hardware (customer premises or dedicated), only the right to establish Web site(s) hosted on Edline's systems. NO hardware configuration is performed on a customer-specific basis. Edline is similar to services like Yahoo! Web Hosting in that the customer simply receives an account that enables it to create and maintain its Web site(s) hosted on the provider's systems, but the customer does not receive any customer-dedicated hardware infrastructure (servers, routers, etc.)
4. Edline's Web Hosting service includes a Web site and home page for every school, class, team, club, and committee in the school district, along with technical support (never sold separately).
5. Edline does not create or modify content for its customers, nor does Edline provide any hardware, configuration of routers (or any other equipment), graphic design, or other professional services. If the school district does not create content or publish content to the websites and home pages, there will be no information to view.
6. Therefore, in accordance with the Eligible Services List entry for "Web Hosting," Edline's Web Hosting Service is 100% eligible.

I hope this helps clarify matters. Please do not hesitate to contact me if I can be of further assistance.

Best Regards,

Jay Alter